

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN G. McNEIGHT and
VICKI L. McNEIGHT,

Plaintiffs,

v.

ORDER
06-CV-436A

RAILCAR CUSTOM LEASING, LLC, et al.,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1), on July 13, 2006. On October 9, 2007, defendant Railcar Custom Leasing, LLC ("RCL") filed a motion for summary judgment, seeking dismissal of plaintiffs' complaint, dismissal of the cross-claim of codefendant ECDC Environmental ("ECDC"), and a conditional order of contractual indemnification against ECDC. On October 15, 2007, ECDC filed a motion for summary judgment, seeking dismissal of plaintiffs' complaint, or in the alternative, dismissal of codefendant RCL's cross-claims and a conditional order of common law indemnification against RCL. On November 8, 2007, plaintiffs John and Vicki McNeight filed a cross-motion for partial summary judgment on the issue of liability. On July 16, 2008, Magistrate Judge Schroeder filed an Amended Report and Recommendation, recommending: (1) that RCL's motion be granted insofar as it seeks dismissal of plaintiffs' complaint, but denied insofar

as it seeks contractual indemnification against ECDC; (2) that plaintiffs' motion for partial summary judgment be denied; and (3) that ECDC's motion for summary judgment be granted insofar as it seeks dismissal of plaintiffs' complaint and dismissal of RCL's cross-claims for contractual indemnification.

Both plaintiffs and RCL have filed objections to the Report and Recommendation. Oral argument on the objections was held on August 27, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court: (1) grants RCL's motion insofar as it seeks dismissal of plaintiffs' complaint, but denies the motion insofar as it seeks contractual indemnification against ECDC; (2) denies plaintiffs' motion for partial summary judgment; and (3) grants ECDC's motion for summary judgment insofar as it seeks dismissal of plaintiffs' complaint and dismissal of RCL's cross-claims for contractual indemnification.

The Clerk of Court is directed to take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 10, 2008